DCLG Technical consultation on implementation of planning changes

Response

The Heritage Alliance

15 April 2016

The Heritage Alliance is the key coalition of heritage interests in England, bringing together over 100 mainly national organisations which are in turn supported by over 7 million members, Friends, volunteers, trustees and staff. Together they own, manage and care for, the vast majority of England's historic environment. The Alliance takes a strong interest in planning policies affecting the historic environment through its Spatial Planning Advocacy Group which draws on the knowledge and expertise in its membership.

The Heritage Alliance welcomes this opportunity to respond to the DCLG Technical consultation on implementation of planning changes.

1: CHANGES TO PLANNING APPLICATION FEES

Question 1.1: Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?

No. For Local Authorities to carry out their roles effectively all authorities need fees increased. The Alliance is concerned by the potential compounded effects of the loss of funding for Local Authorities that continue to underperform year on year. We would ask government to look at other ways to deal with underperformance since the current proposals present a risk to performance and services.

Question 1.2: Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?

The Heritage Alliance supports the government's desire to improve performance. We are, however, concerned that a strategy that rewards good performance only will fail to support underperforming Local Authorities, thereby frustrating the government's aim of improving performance across the board.

Further, we ask for clarification of the definition of 'under-performance', of how this will be measured and how funds will be apportioned. We are particularly concerned by the widening fees gap that will open between (well) performing and under-performing authorities over the medium to long term. We ask government to provide analysis of the potential impact on future performance and service provision.

We are especially concerned by the risk of losing key skills in heritage advice and experience that is presented by the freezing of fees to under-performing authorities.

Noting our concerns, if any change of the type indicated were introduced we feel that there must be a delay in order for authorities to meet the required criteria.

Question 1.3: Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?
Yes. Only if they do not detract from service delivery, namely that the applicants continue to receive the high-level of advice and the assessment of applicants is as diligent irrespective of the fees route.

We would of course welcome 'higher standards of service' but are cautious as to what 'radical proposals for reform' might comprise.

Question 1.4: Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?
We support the principle of fast-track services as long as that an expedited service is not provided at the expense of quality of decision-making on those fast-tracked applications and/or those on the normal timescale. We ask assurance from government that the additional funds raised through fast-track routes are invested directly back in the local authority planning services.

We are concerned, however, that a proliferation of fast-track services may in fact lead to a confusion of service levels and fees.

Question 1.5: Do you have any other comments on these proposals, including the impact on business and other users of the system?
The Heritage Alliance seeks assurance from government that fast-track 'enhanced' services will not be delivered at the expense of sufficient and informed assessment of impact of development on the historic environment (as detailed in NPPF paragraph 156-58, 169-70). Any changes to national planning policy must not reduce the weight given to these considerations and this should be supported in new guidance for the process.

2: PERMISSION IN PRINCIPLE

Question 2.1: Do you agree that the following should be qualifying documents capable of granting permission in principle?

a) **future local plans;**
b) **future neighbourhood plans;**
c) **brownfield registers.**

Yes, the Alliance agrees that those listed should be qualifying documents subject to the following comments.

The Alliance supports use of Local Plans and Neighbourhood Plans, which have to take account of local character and context including local designations such as conservation areas. We are therefore disappointed that four years after the National Planning Policy Framework was published, 17% of Local Authorities have still not published Local Plans and 34% have not yet adopted Plans.1 If Local Plans are to constitute 'qualifying documents' there needs to be equity across Local Authorities: both in the provision and maintenance of Plans. We therefore seek

[1] Communities and Local Government Commons Select Committee, Report: Department for Communities and Local Government's consultation on national planning policy (April 2016)

clarification as to whether the government proposes to place a statutory duty on local authorities to produce and maintain Local Plans (as both the Local Plan Expert Group2 and Communities and Local Government Commons Select Committee have recommended).

The Alliance supports the principle of making the most efficient use of land by re-developing brownfield sites, where appropriate to local circumstances and weighed against the environmental impact (including impact upon heritage assets of archaeological interest); this follows the core principle in NPPF (paragraph 17). We seek assurance that in assessing brownfield sites the impact on the environment particularly undesignated heritage assets and on the setting of adjacent heritage assets is taken into account when considering proposals to grant 'permission in principle' for sites to go on local authority brownfield registers. We believe that the proposed measures to facilitate the delivery of brownfield land for housing must contain adequate safeguards to ensure that the significance of any heritage assets are understood, so that such assets are adequately managed and protected in line with the NPPF.

We are concerned that matters relating to the natural and historic environments will be picked up at the later technical details stage and not at the permission in principle stage. This will not allow for adequate assessment of the resource, the impact of development and mitigation. Pre-determination assessment and evaluation is a crucial principle set out in NPPF paragraph 128. If Government wishes to avoid re-visiting 'in principle decisions … at multiple points in the process' (paragraph 2.3), it must fully recognise that in order to avoid re-assessment at a later stage all necessary information which may affect the principle of development or its viability must be assessed before permission in principle is granted.

We are also concerned that good design – a core principle of the NPPF – may suffer if it is not adequately dealt with at the permission-in-principle stage. It should at least require working to NPPF paragraphs 58-61.

Question 2.2: Do you agree that permission in principle on application should be available to minor development?

With respect to minor development we would reiterate our comments above: desk-based assessment (consulting MAGIC and the local Historic Environment Record a minimum requirement, as required by NPPF paragraph 128) must be conducted at the earliest stage possible; this ensures proper protection for the natural and historic environments, good design and 'informed' development that mitigates against delays later in the process.

Question 2.3: Do you agree that location, uses and amount of residential development should constitute 'in principle matters' that must be included in a permission in principle? Do you think any other matter should be included?

Yes. In addition we are concerned that permission in principle for development of brownfield sites would remove the normal evaluation requirements in the planning process that currently allow for pre-development assessment of environmental impact in particular archaeological evaluation. This could be detrimental both to the historic environment and to timely development, and will not deliver government's objective of giving 'greater certainty and predictability within the planning system' (paragraph 2.4).

[2] Local Plan Expert Group, LOCAL PLANS. Report to the Communities Secretary and to the Minister of Housing and Planning (March 2016)

We would reiterate that good design is crucial at this stage.

Question 2.4: Do you have views on how best to ensure that the parameters of the technical details that need to be agreed are described at the permission in principle stage?

In this respect, we would reiterate our comments above: a desk-based assessment (consulting MAGIC for the natural environment and the local Historic Environment Record is the minimum requirement, as required by NPPF) must be conducted at the earliest stage possible. This ensures proper consideration of and protection for the natural and historic environments and reduces the risk of delays and uncertainty later in the process.

Question 2.5: Do you have views on our suggested approach to a) Environmental Impact Assessment, b) Habitats Directive or c) other sensitive sites?

The Alliance welcomes confirmation that 'permission in principle' will not remove obligations for carrying out Environmental Impact Assessments. In light of the forthcoming referendum of UK membership of the EU, we ask government to confirm that in the event of the UK leaving the European Community, relevant EU Directives will be transferred into domestic legislation.

Question 2.6: Do you agree with our proposals for community and other involvement?

We welcome government recognition of the need for 'involvement of communities and other interested parties' (paragraph 2.4). We would ask, however, for clarification of what 'appropriate' engagement would comprise. It will be important to set out in layman's terms what the process gives permission for and how much information will only be required at technical detail stage.

We also note with concern that it will not be mandatory to consult with the community on applications for technical details consent (paragraph 2.35). As the permission in principle process is intended to be light-touch, then it is highly likely that substantive planning matters will be deferred to the technical detail stage.

Question 2.7: Do you agree with our proposals for information requirements?

No. As mentioned above, we strongly assert the necessity of information gathering and assessment at the earliest possible stage to inform sound decision-making.

Question 2.8: Do you have any views about the fee that should be set for a) a permission in principle application and b) a technical details consent application?

To reiterate, we believe that fees should be invested directly back in local authority planning services.

Question 2.9: Do you agree with our proposals for the expiry of on permission in principle on allocation and application? Do you have any views about whether we should allow for local variation to the duration of permission in principle?

We support a maximum expiry period of three years, in line with standard conditions for planning permission.

Question 2.10: Do you agree with our proposals for the maximum determination periods for a) permission in principle minor applications, and b) technical details consent for minor and major sites?

We support a maximum expiry period of three years, in line with standard conditions for planning permission.

3: BROWNFIELD REGISTER

Question 3.1: Do you agree with our proposals for identifying potential sites? Are there other sources of information that we should highlight?

Due diligence is required in assessing the natural and historic environment constraints, taking account of information in MAGIC, the local Historic Environment Record and the National Heritage List for England (as specified in NPPF). The need for such assessment and evaluation must be made clear.

Question 3.2: Do you agree with our proposed criteria for assessing suitable sites? Are there other factors which you think should be considered?

We repeat the need for NPPF and other guidance to be used at this stage to assess sites.

We welcome recognition in the consultation document (paragraph 3.17) that the 'National Planning Policy Framework has strong policies for conserving and enhancing both the natural and the historic environment which should be taken into account, together with other specific policies in the Framework that indicate development should be restricted'. This must fully embrace all necessary assessment and evaluation of natural and historic environment assets.

Question 3.3: Do you have any views on our suggested approach for addressing the requirements of Environmental Impact Assessment and Habitats Directives?

We would welcome confirmation that these will continue to be applied. In light of the forthcoming referendum of UK membership of the EU, we ask government to confirm that in the event of our exit, the EU Directives will be moved into domestic legislation.

Question 3.4: Do you agree with our views on the application of the Strategic Environment Assessment Directive? Could the Department provide assistance in order to make any applicable requirements easier to meet?

With sites coming forward under the Local Plan process we hope that the Strategic Environment Assessment Directive and requirements will be applied with due diligence. Again, we ask government to confirm that in the event of our exit from the EU, the Directives will be moved into domestic legislation.

Question 3.5: Do you agree with our proposals on publicity and consultation requirements?

We welcome reference to specialist advice and in particular emphasise that local authorities and government must consult the statutory historic environment advisor, Historic England.

Question 3.6: Do you agree with the specific information we are proposing to require for each site?

We reiterate our comments above: desk-based assessment (consulting MAGIC and the local Historic Environment Record a minimum requirement, as required by NPPF) must be conducted at the earliest stage possible; this ensures proper protection for the natural and historic environments, good design and 'informed' development that mitigates against delays later in the process.

Question 3.7: Do you have any suggestions about how the data could be standardised and published in a transparent manner?

No comment.

Question 3.8: Do you agree with our proposed approach for keeping data up-to-date?

Yes. Provided that sufficient resources are committed to achieve this end.

Question 3.9: Do our proposals to drive progress provide a strong enough incentive to ensure the most effective use of local brownfield registers and permission in principle?

In the first place, we believe that the proposals provide too strong an incentive to obtain permission in principle through entry on a brownfield register without adequate safeguards for the historic environment.

We are concerned that granting of permission in principle could unduly raise expectations amongst developers and undermine assessment and protection of the natural and historic environments at later stages in the process.

Furthermore, the proposals go little way to ensure delivery of development, even if permission in principle is for only three years. We support the CLG Commons Select Committee's call on government to set out how it will encourage the delivery of brownfield development to meet local housing needs exploiting the UK's knowledge and experience of land remediation.

Question 3.10: Are there further specific measures we should consider where local authorities fail to make sufficient progress, both in advance of 2020 and thereafter?

No comment.

4: SMALL SITES REGISTER

Question 4.1: Do you agree that for the small sites register, small sites should be between one and four plots in size?

No. We would advocate consistency with existing guidance, such that small sites should be defined in size as comprising less than 10 plots. The DCLG 2010 definition of major development being over 10 plots or 1ha in size.

Question 4.2: Do you agree that sites should just be entered on the small sites register when a local authority is aware of them without any need for a suitability assessment?

The Alliance is concerned that the act of placing a site on a register will raise expectation that permission will be forthcoming. This is a particular concern since government propose no assessment of suitability before a site is included in a register.

To reiterate, desk-based assessment (consulting MAGIC and the local Historic Environment Record a minimum requirement, as required by NPPF) must be conducted at the earliest stage possible; this ensures proper protection for the natural and historic environments, good design and 'informed' development that mitigates against delays later in the process.

Question 4.3: Are there any categories of land which we should automatically exclude from the register? If so what are they?

Yes. Sites which include designated heritage assets should be excluded. Those areas identified as having archaeological potential or which may affect the setting of a heritage asset should be properly assessed before being placed on a register.

We would add that the historic environment is not a block to development; but, insufficient assessment and that taken late in the process can add to unnecessary delays.

Question 4.4: Do you agree that location, size and contact details will be sufficient to make the small sites register useful? If not what additional information should be required?

If the suggested assessment above is undertaken, it should be added to any other identified constraints and included as additional information.

5: NEIGHBOURHOOD PLANNING

Question 5.1: Do you support our proposals for the circumstances in which a local planning authority must designate all of the neighbourhood area applied for?
No comment.

Question 5.2: Do you agree with the proposed time periods for a local planning authority to designate a neighbourhood forum?
No comment.

Question 5.3: Do you agree with the proposed time period for the local planning authority to decide whether to send a plan or Order to referendum?
No comment.

Question 5.4: Do you agree with the suggested persons to be notified and invited to make representations when a local planning authority's proposed decision differs from the recommendation of the examiner?
No comment.

Question 5.5: Do you agree with the proposed time periods where a local planning authority seeks further representations and makes a final decision?
No comment.

Question 5.6: Do you agree with the proposed time period within which a referendum must be held?
No comment.

Question 5.7: Do you agree with the time period by which a neighbourhood plan or Order should be made following a successful referendum?
No comment.

Question 5.8: What other measures could speed up or simplify the neighbourhood planning process?
We believe firmly in the value of early assessment of environmental issues within the plan boundary with advice from Local Authority natural and historic environment experts. This should be as simple as referring to MAGIC and the local Historic Environment Record and having the results interpreted.

Question 5.9: Do you agree with the proposed procedure to be followed where the Secretary of State may intervene to decide whether a neighbourhood plan or Order should be put to a referendum?
Yes.

Question 5.10: Do you agree that local planning authorities must notify and invite representations from designated neighbourhood forums where they consider they may have an interest in the preparation of a local plan?
Yes.

6: LOCAL PLANS

Question 6.1: Do you agree with our proposed criteria for prioritising intervention in local plans?
The Alliance supports a plan-led approach to delivery of sustainable development: one which takes account of local character and the voice of the local community. We are concerned the centralising of planning powers may serve to disenfranchise local communities and with the risk that important local knowledge may fail to be taken into account.

It would be better to second into the Local Plans team experts from PINS to help draft the policies needed for the plan and use any statutory consultee advice on what local policies are needed for the environment.

Question 6.2: Do you agree that decisions on prioritising intervention to arrange for a local plan to be written should take into consideration a) collaborative and strategic plan-making and b) neighbourhood planning?
Yes.

Question 6.3: Are there any other factors that you think the government should take into consideration?
Whilst recognising that increased density of housing development around commuter hubs is desirable, we would draw attention to the fact that railway stations and other transport hubs are often located at the historic core of towns and cities. We would reiterate the CLG Commons Select Committee's recommendation that development at commuter hubs must take account of whether attendant infrastructure has, or will have, sufficient capacity to accommodate higher housing density. Furthermore, the historic significance of land around railway stations must be fully assessed, taking account of the value of industrial and railway heritage.

Question 6.4: Do you agree that the Secretary of State should take exceptional circumstances submitted by local planning authorities into account when considering intervention?
Yes.

Question 6.5: Is there any other information you think we should publish alongside what is stated above?
No comment.

Question 6.6: Do you agree that the proposed information should be published on a six monthly basis?
No comment.

CHAPTER 7: EXPANDING THE APPROACH TO PLANNING PERFORMANCE

Question 7.1: Do you agree that the threshold for designations involving applications for non-major development should be set initially at between 60-70% of decisions made on time, and between 10-20% of decisions overturned at appeal? If so what specific thresholds would you suggest?
No. To reiterate, the thresholds should be consistent with those for major development and the emphasis must be as much on the quality of decision as on its speed.

Question 7.2: Do you agree that the threshold for designations based on the quality of decisions on applications for major development should be reduced to 10% of decisions overturned at appeal?

No. We believe that the threshold should stay the same, particularly in the light of the proposals to deprive under-performing authorities of the benefit of increases in fees.

Question 7.3: Do you agree with our proposed approach to designation and de-designation, and in particular:

a) **that the general approach should be the same for applications involving major and non-major development?**
b) **performance in handling applications for major and non-major development should be assessed separately?**
c) **in considering exceptional circumstances, we should take into account the extent to which any appeals involve decisions which authorities considered to be in line with an up-to-date plan, prior to confirming any designations based on the quality of decisions?**

Yes to a–c.

Question 7.4: Do you agree that the option to apply directly to the Secretary of State should not apply to applications for householder developments?

Yes. We believe that this is important.

8: TESTING COMPETITION IN THE PROCESSING OF PLANNING APPLICATIONS

Question 8.1: Who should be able to compete for the processing of planning applications and which applications could they compete for?

We seek assurance from government that irrespective of whosoever is processing planning applications that all relevant parties are consulted and their voice given due weight.

The consultation document does not state what standards and criteria providers must meet to be appointed and how specialist historic environment skills will be provided. How will competence be measured pre-appointment and what measures will be taken to ensure satisfactory ongoing performance?

Question 8.2: How should fee setting in competition test areas operate?

No comment.

Question 8.3: What should applicants, approved providers and local planning authorities in test areas be able to?

No comment.

Question 8.4: Do you have a view on how we could maintain appropriate high standards and performance during the testing of competition?

We assert the need for high standards of historic environment advice with standards that meet industry (IHBC and CIFA Codes of Conduct) guidelines. A dynamic monitoring process should be established in order to provide 'live' feedback on the quality of work.

Question 8.5: What information would need to be shared between approved providers and local planning authorities, and what safeguards are needed to protect information?

No comment.

Question 8.6: Do you have any other comments on these proposals, including the impact on business and other users of the system?

No comment.

9: INFORMATION ABOUT FINANCIAL BENEFITS

Question 9.1: Do you agree with these proposals for the range of benefits to be listed in planning reports?

Assessment of financial benefits should be wider than just housing and jobs. We strongly urge that government takes into account heritage benefits. Heritage contributes to identity creation, place-making and social cohesion; provides opportunities to develop skills and contributes to health and well-being; it also has a real economic value in terms of tourism, especially in fragile rural economies.

Of the less tangible benefits, we suggest that enhancement of heritage assets and removal of a heritage asset from the At Risk Register should be included.

Question 9.2: Do you agree with these proposals for the information to be recorded, and are there any other matters that we should consider when preparing regulations to implement this measure?

We agree that the information should be recorded and that this information should go beyond listing the applicants claimed financial benefits. We feel that planning considerations need to be clearly balanced against social and environmental considerations (including those relating to protecting or enhancing the historic environment).

10: SECTION 106 DISPUTE RESOLUTION

Question 10.1: Do you agree that the dispute resolution procedure should be able to apply to any planning application?

No comment.

Question 10.2: Do you agree with the proposals about when a request for dispute resolution can be made?

No comment.

Question 10.3: Do you agree with the proposals about what should be contained in a request?

No comment.

Question 10.4: Do you consider that another party to the section 106 agreement should be able to refer the matter for dispute resolution? If yes, should this be with the agreement of both the main parties?

No comment.

Question 10.5: Do you agree that two weeks would be sufficient for the cooling off period?

No comment.

Question 10.6: What qualifications and experience do you consider the appointed person should have to enable them to be credible?

No comment.

Question 10.7: Do you agree with the proposals for sharing fees? If not, what alternative arrangement would you support?

No comment.

Question 10.8: Do you have any comments on how long the appointed person should have to produce their report?

No comment.

Question 10.9: What matters do you think should and should not be taken into account by the appointed person?
No comment.

Question 10.10: Do you agree that the appointed person's report should be published on the local authority's website? Do you agree that there should be a mechanism for errors in the appointed person's report to be corrected by request?
No comment.

Question 10.11: Do you have any comments about how long there should be following the dispute resolution process for a) completing any section 106 obligations and b) determining the planning application?
No comment.

Question 10.12: Are there any cases or circumstances where the consequences of the report, as set out in the Bill, should not apply?
No comment.

Question 10.13: What limitations do you consider appropriate, following the publication of the appointed person's report, to restrict the use of other obligations?
No comment.

Question 10.14: Are there any other steps that you consider that parties should be required to take in connection with the appointed person's report and are there any other matters that we should consider when preparing regulations to implement the dispute resolution process?
No comment.

11: PERMITTED DEVELOPMENT RIGHTS FOR STATE-FUNDED SCHOOLS

Question 11.1: Do you have any views on our proposals to extend permitted development rights for state-funded schools, or whether other changes should be made? For example, should changes be made to the thresholds within which school buildings can be extended?
We feel that standard assessment criteria should apply: desk-based assessment (consulting the local Historic Environment Record a minimum requirement, as required by NPPF) must be conducted at the earliest stage possible; this ensures proper protection for the natural and historic environments, good design and 'informed' development that mitigates against delays later in the process.

Question 11.2: Do you consider that the existing prior approval provisions are adequate? Do you consider that other local impacts arise which should be considered in designing the right?
No. Because they do not require prior assessment of heritage constraints.

12: CHANGES TO STATUTORY CONSULTATION ON PLANNING APPLICATIONS

Question 12.1: What are the benefits and/or risks of setting a maximum period that a statutory consultee can request when seeking an extension of time to respond with comments to a planning application?
We believe the primary risk to be that when complex issues are encountered there is insufficient time properly to address them leading to flawed decisions.

Question 12.2: Where an extension of time to respond is requested by a statutory consultee, what do you consider should be the maximum additional time allowed? Please provide details.
No comment.

13: PUBLIC SECTOR EQUALITY DUTY

Question 13.1: Do you have any views about the implications of our proposed changes on people with protected characteristics as defined in the Equalities Act 2010? What evidence do you have on this matter? Is there anything that could be done to mitigate any impact identified?

No comment.

Question 13.2 Do you have any other suggestions or comments on the proposals set out in this consultation document?

No comment.

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